

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Satco Products, Inc. (“Satco”), with Englander and Satco individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Satco employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Englander alleges that Satco manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC hand tool grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are defined as vinyl/PVC hand tool grips containing DEHP that are manufactured, imported, distributed, sold and/or offered for sale in California by Satco, including, but not limited to, the *Satco Lighting Hardware Heavy Duty Chain Pliers, S70-099 (#0 45923 70099 6)* and *Satco Lighting Hardware Heavy Duty Chain Pliers, S90-099*. The vinyl/PVC hand tool grips containing the DEHP shall, where appropriate, be referred to as the “Products.”

### 1.4 Notice of Violation

On or about March 18, 2013, Englander served Satco and certain various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that

provided the recipients with notice that Satco violated Proposition 65 by failing to warn customers and consumers in California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Satco denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold, or offered for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Satco of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Satco of any fact, finding, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Satco's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 31, 2013.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1 Reformulated Products**

Commencing on the Effective Date and continuing thereafter, Satco shall only import, distribute, sell and offer for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date all Products imported, distributed, sold, or offered for sale in the State of California by Satco shall be Products that qualify as Reformulated Products as defined in Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

## **2.3 Interim Warning Program for Non-Reformulated Products**

Commencing on the Effective Date, all Products imported, distributed, sold, or offered for sale in the State of California that do not qualify as Reformulated Products shall contain a warning label, as set forth in subsections 2.3.1 and 2.3.2. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

### **2.3.1 Retail Store Sales**

Satco shall affix a warning to the packaging, labeling, or directly on any Products that are not Reformulated Products provided for sale in retail outlets in California after the Effective Date that states:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

### **2.3.2 Mail Order Catalog and Internet Sales**

In the event that Satco sells any Products that are not Reformulated Products via mail order catalog printed twelve months after the Effective Date, or the Internet to customers located in California after the Effective Date, Satco shall provide a warning for such Products sold via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall identify

the specific Product to which the warning applies as further specified in Sections 2.3.2(a) and (b).

**(a) Mail Order Catalog Warning**

Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product(s):

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Satco shall utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Satco must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Satco elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

**(b) Internet Sales.** Satco does not currently sell Products via the internet, but in the event that Satco does begin to sell Products via the internet, directly to customers located in California, after the Effective Date, that are not Reformulated Products,

Satco shall provide warnings for such Products sold via the internet to California residents.

Warnings given on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3.2(b)(i).

**(i) Internet Website Warning**

A warning shall be given in conjunction with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol ▼ contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

**3. MONETARY PAYMENTS**

**3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Satco shall pay a total of \$13,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with

75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Englander, as follows:

### **3.1.1 Initial Civil Penalty**

Satco shall pay an initial civil penalty in the amount of \$4,000 on or before August 31, 2013. Satco shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,000 ; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$1,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.1.2 Final Civil Penalty**

Satco shall pay a final civil penalty of \$9,000 on or before February 15, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than January 31, 2014, an officer of Satco provides Englander with written certification that, as of the date of such certification and continuing into the future, Satco has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Satco are Reformulated Products. Englander must receive any such certification on or before January 31, 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Satco shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$6,750; and (b) “The Chanler Group in Trust for Peter Englander” in the amount of \$2,250.

### **3.2 Attorney Fees and Costs**

The parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Satco then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Satco shall pay \$22,500 for

fees and costs incurred as a result of investigating, bringing this matter to Satco's attention, and negotiating a settlement in the public interest. Satco shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before August 31, 2013, to the address listed in Section 3.3.1(a) below.

### **3.3 Payment Procedures**

#### **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Englander, pursuant to Sections 3.1.1 through 3.1.2, shall be delivered to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Satco shall issue separate 1099 forms for each payment to Englander, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Englander's Release of Satco**

This Settlement Agreement is a full, final, and binding resolution between Englander and Satco of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Satco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Satco directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about exposures to DEHP contained in Products that were manufactured, imported, distribute, sold and/or offered for sale by Satco in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees, limited to and arising under Proposition 65 with respect to DEHP in Products manufactured, imported, distributed, sold, and/or offered for sale in California by Satco prior to the Effective Date (collectively, "claims"), against Satco.

##### **4.2 Satco's Release of Englander**

Satco, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims that it may have against Englander and his attorneys and other representatives, for any and all actions taken or statements made by Englander and his attorneys and other representatives, whether in the course of

investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Satco may request in writing that Englander draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Englander and Satco agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Satco agrees to reimburse Englander and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this Section in an amount not to exceed \$8,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Englander's counsel for work performed under this Section, Satco will remit payment to the address provided in Section 3.3.1(a)

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Satco may provide written notice to Englander of any asserted change in the law, and have no further

obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Satco:

William Gildin, President  
Satco Products, Inc.  
110 Heartland Boulevard  
Brentwood, NY 11717

With a copy to:

Robert P. Lynn, Esq.  
Lynn, Gartner, Dunne & Covello, LLP  
330 Old Country Road, Suite 103  
Mineola, NY 11501

For Englander:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. POST-EXECUTION ACTIVITIES**

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

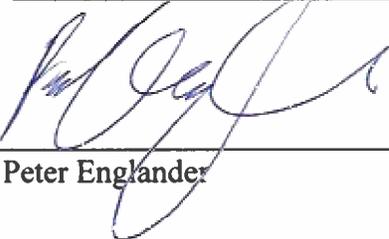
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: September 3, 2013

Date: 8/14/13

By:   
Peter Englander

By:   
William Gildin, President  
Satco Products, Inc.